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10/511,294	10/15/2004	Klaus Lenhart	Q98835	2233
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SUGHRUE MION, PLLC			GARCIA, ERNESTO	
2100 PENNSYLVANIA AVENUE, N.W.				
SUITE 800			ART UNIT	PAPER NUMBER
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			09/21/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/511,294	LENHART, KLAUS	
	<b>Examiner</b>	<b>Art Unit</b>	
	ERNESTO GARCIA	3679	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 May 2009.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 8-16,21 and 23-26 is/are pending in the application.
  - 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 8-10,12,15,16,21,23 and 26 is/are rejected.
- 7) Claim(s) 11,24 and 25 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 05 January 2007 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date <u>1/2/09</u> .	6) <input type="checkbox"/> Other: _____.

## DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### *Response to Amendment*

The claims amendment has been corrected per 37 CFR 1.121. The status identifier of claims 21 and 23 has been changed to --(withdrawn-currently amended)-- since these claims were previously withdrawn by the examiner.

### *Election of Species*

Claims 13 and 14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 20, 2006.

Regarding the reinstatement of previously withdrawn claims 21 and 23, these claims are now readable on the elected species I, Figures 1 and 2, as the axial slots 43, 44 extend over most but not all of an entire axial length of the radially spreadable element 16.

***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the spreadable element being contactable with each limit stop (claim 1 and 10, lines 14-16) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Note that Figure 1 and 2 just shows the spreadable element 16 only in contact with limit stop element 26.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “only one single inner cone” recited in claims 8, 10, 15, and 16, lines 9-10, and “the radially spreadable element is moveable axially within the distance between the limit stops, including the gap distance, without rotation thereof and is contactable with each limit stop” recited in claim 8, lines 14-16, .

***Claim Objections***

Claims 8, 10, 15, and 16 are objected to because of the following informalities: regarding claims 8, 10, 15, and 16, “thereof” in line 15 should be defined. Further, the subject matter of these claims is directed to “an adjustable-length pole” but has no mention that the inner tube is actually inserted in the outer tube to render adjustability. Accordingly, these claims should recite that the inner tube is actually inserted in the outer tube to render an adjustable-length pole. This adjustability of the two tubes only becomes possible until claim 26; and,

regarding claim 16, "" in line 25 should be --the--. Appropriate correction is required. For purposes of examining the instant invention, the examiner has assumed these corrections have been made.

***Claim Rejections - 35 USC § 103***

Claims 8, 9, 12, and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenhart, DE-29,706,849, in view of Neuheiten, CH-267,177.

Regarding claim 8, Lenhart discloses, in Figures 1 and 5, an adjustable-length pole comprising at least one outer tube **12**, an inner tube **11** structured, an adjusting screw **118'**, a radially spreadable element **116**, and an axially moveable interior element **117**. The inner tube **11** is dimensioned for insertion into the outer tube **12** in a telescoping fashion. A limit stop **19** is disposed at an end **13** of the inner tube **11**. The adjusting screw **118'** is axially oriented within the outer tube **12**, non-rotatable with respect to the inner tube **11**, and supported in a fixed manner on the end of the inner tube **11**. A limit stop **126** is disposed on the free end of the adjusting screw **118'**. The spreadable element **116** has a non-threaded bore **A1** (see marked-up attachment provided in the last Office action) and an inner cone **122'**. The inner cone **122'** opens towards the end of the inner tube **11**. The spreadable element **116** is disposed with its axial length between the limit stop **19** disposed at the end of the inner tube **11** and the limit stop **126** disposed on the free end of the adjusting screw **118'**. A distance **A2**

between the limit stops **19, 126** is larger than the axial length of the radially spreadable element **116** by a gap distance **A3** such that the spreadable element **116** is able to move axially within the distance between the limit stops including the gap distance **A3**. The spreadable element **116** is able to contact the limit stop disposed on the free end of the adjusting screw **118'**. The interior element **117** has an internal threaded bore **A4** (note that the interior element is threaded as that shown in DSI, DE-8,004,343) and outer cone **127'** structured, dimensioned, and disposed for cooperation with the inner cone **122'**. The interior element **117** is screwed onto the adjusting screw **118'** and able to axially move with respect to the inner tube **11** by rotation thereof via the internal threaded bore **A4**. The spreadable element **116** and the interior element **117** cooperate and form a spreading device axially supported at the end of the inner tube **11**. However, Lenhart fails to disclose the inner cone **122'** being only one single inner cone of the spreadable element since spreadable element has two inner cones. Neuheiten teaches, between Figures 5 and 6, that a spreading element can have one inner cone or two inner cones as similarly taught in Lenhart. Neuheiten teaches alternative configurations in order to minimize parts so that the lower cone only holds (see machine translation provided in the last Office action). Therefore, as taught by Neuheiten, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the inner cone **122'** of Lenhart be the only one single inner cone to minimize the number of parts as an alternative configuration so that the lower cone only holds.

Regarding claim 9, the pole is a ski or a walking stick.

Regarding claim 12, the limit stop **126** disposed on the free end of the adjusting screw is a cap that is axially secured at the free end of the adjusting screw **118'** is a cap axially secured at the free end of the adjusting screw after the radially spreadable element has been set in place.

Regarding claim 26, the inner tube and the spreading device are inserted into the outer tube and, by a rotation of the inner tube with respect to the outer tube, the spreading device clamps the inner tube to the outer tube.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lenhart, DE-29,706,849, in view of Neuheiten, CH-267,177, and further in view of DSI, DE-8,004,343U1.

Regarding claim 10, Lenhart discloses, in Figures 1 and 5, an adjustable-length pole comprising at least one outer tube **12**, an inner tube **11** structured, an adjusting screw **118'**, a radially spreadable element **116**, and an axially moveable interior element **117**. The inner tube **11** is dimensioned for insertion into the outer tube **12** in a telescoping fashion. A limit stop **19** is disposed at an end **13** of the inner tube **11**. The adjusting screw **118'** is axially oriented within the outer tube **12**, non-rotatable with respect to the inner tube **11**, and supported in a fixed manner on the end of the inner

tube **11**. A limit stop **126** is disposed on the free end of the adjusting screw **118'**. The spreadable element **116** has a non-threaded bore **A1** (see marked-up attachment) and an inner cone **122'**. The inner cone **122'** opens towards the end of the inner tube **11**. The spreadable element **116** is disposed with its axial length between the limit stop **19** disposed at the end of the inner tube **11** and the limit stop **126** disposed on the free end of the adjusting screw **118'**. A distance **A2** between the limit stops **19, 126** is larger than the axial length of the radially spreadable element **116** by a gap distance **A3** such that the spreadable element **116** is able to move axially within the distance between the limit stops including the gap distance **A3**. The spreadable element **116** is able to contact the limit stop disposed on the free end of the adjusting screw **118'**. The interior element **117** has an internal threaded bore **A4** and outer cone **127'** structured, dimensioned, and disposed for cooperation with the inner cone **122'**. The interior element **117** is able to axially move with respect to the inner tube **11** by rotation thereof via the internal threaded bore **A4**. The spreadable element **116** and the interior element **117** cooperate and form a spreading device axially supported at the end of the inner tube **11**. However, Lenhart fails to disclose the inner cone **122'** being only one single inner cone of the spreadable element since the spreadable element has two inner cones, and the radially spreadable element being configured as a pot having a base penetrated by a free end area of the adjusting screw, facing away from the inner tube **11**.

Neuheiten teaches, between Figures 5 and 6, that a spreading element can have one inner cone or two inner cones as similarly taught in Lenhart. Neuheiten teaches alternative configurations in order to minimize parts. Therefore, as taught by Neuheiten, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the inner cone **122'** of Lenhart be the only one single inner cone to minimize the number of parts as an alternative configuration.

DSI teaches, in Figure 1, a radially spreadable element **10** configured as a pot having a base penetrated by a free end area of an adjusting screw **5** facing away from the inner tube **3** as an alternative configuration for a radially spreadable element **10** with having only one single inner cone (the conical surface). Therefore, as taught by DSI, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the configuration of the spreadable element **116**, as modified by Neuheiten, with that of DSI to use with the spreading element modified to have only one single inner cone.

Claims 15 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenhart, DE-29,706,849, in view of Neuheiten, CH-267,177, and further in view of Kupski, 3,145,669.

Regarding claim 15, Lenhart discloses, in Figures 1 and 5, an adjustable-length pole comprising at least one outer tube **12**, an inner tube **11** structured, an adjusting

screw **118'**, a radially spreadable element **116**, and an axially moveable interior element **117**. The inner tube **11** is dimensioned for insertion into the outer tube **12** in a telescoping fashion. A limit stop **19** is disposed at an end **13** of the inner tube **11**. The adjusting screw **118'** is axially oriented within the outer tube **12**, non-rotatable with respect to the inner tube **11**, and supported in a fixed manner on the end of the inner tube **11**. A limit stop **126** is disposed on the free end of the adjusting screw **118'**. The spreadable element **116** has a non-threaded bore **A1** (see marked-up attachment provided in the last Office action) and an inner cone **122'**. The inner cone **122'** opens towards the end of the inner tube **11**. The spreadable element **116** is disposed with its axial length between the limit stop **19** disposed at the end of the inner tube **11** and the limit stop **126** disposed on the free end of the adjusting screw **118'**. A distance **A2** between the limit stops **19, 126** is larger than the axial length of the radially spreadable element **116** by a gap distance **A3** such that the spreadable element **116** is able to move axially within the distance between the limit stops including the gap distance **A3**. The interior element **117** has an internal threaded bore **A4** and outer cone **127'** structured, dimensioned, and disposed for cooperation with the inner cone **122'**. The interior element **117** is screwed onto the adjusting screw **118'** and able to axially move with respect to the inner tube **11** by rotation thereof via the internal threaded bore **A4**. The spreadable element **116** and the interior element **117** cooperate and form a spreading device axially supported at the end of the inner tube **11**. The spreading element **116** has axial slots (see Figure 6). However, Lenhart fails to disclose the inner cone **122'** being only one single inner cone of the spreadable element since spreadable

element has two inner cones. Further, Lenhart fails to disclose the interior element **117** having protruding fins respectively guided in the axial slots of the spreading element **32**.

Neuheiten teaches, between Figures 5 and 6, that a spreading element can have one inner cone or two inner cones as similarly taught in Lenhart. Neuheiten teaches alternative configurations in order to minimize parts. Therefore, as taught by Neuheiten, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the inner cone **122'** of Lenhart be the only one single inner cone to minimize the number of parts as an alternative configuration.

Kupski teach, in Figure, 5, an interior element **17** having protruding fins **33** guided in axial slots **30** of a spreading element **16** to prevent the interior element from rotating relative to the spreading element. Therefore, as taught by Kupski, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a fin in the interior element of Lenhart guided in the axial slots of the spreading element of Lenhart to prevent the interior element from rotating relative to the spreading element. Given the modification, the axial slots would have had an axial length larger than an axial length of the fins. Further, the axial slots and the radially protruding fins would have structurally cooperated to permit the interior element to move axially as the adjusting screw is rotated with respect to the interior element without rotation of the radially spreadable element.

Regarding claim 21, given the modification, the axial slots extended over most but not all of an entire axial length of the radially spreadable element.

Claims 16 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenhart, DE-29,706,849, in view of Neuheiten, CH-267,177, and further in view of DSI, DE-8,004,343U1, and Kupski, 3,145,669.

Regarding claim 16, Lenhart discloses, in Figures 1 and 5, an adjustable-length pole comprising at least one outer tube **12**, an inner tube **11** structured, an adjusting screw **118'**, a radially spreadable element **116**, and an axially moveable interior element **117**. The inner tube **11** is dimensioned for insertion into the outer tube **12** in a telescoping fashion. A limit stop **19** is disposed at an end **13** of the inner tube **11**. The adjusting screw **118'** is axially oriented within the outer tube **12**, non-rotatable with respect to the inner tube **11**, and supported in a fixed manner on the end of the inner tube **11**. A limit stop **126** is disposed on the free end of the adjusting screw **118'**. The spreadable element **116** has a non-threaded bore **A1** (see marked-up attachment provided in the last Office action) and an inner cone **122'**. The inner cone **122'** opens towards the end of the inner tube **11**. The spreadable element **116** is disposed with its axial length between the limit stop **19** disposed at the end of the inner tube **11** and the limit stop **126** disposed on the free end of the adjusting screw **118'**. A distance **A2** between the limit stops **19, 126** is larger than the axial length of the radially spreadable element **116** by a gap distance **A3** such that the spreadable element **116** is able to

move axially within the distance between the limit stops including the gap distance **A3**.

The interior element **117** has an internal threaded bore **A4** and outer cone **127'** structured, dimensioned, and disposed for cooperation with the inner cone **122'**. The interior element **117** is screwed onto the adjusting screw **118'** and able to axially move with respect to the inner tube **11** by rotation thereof via the internal threaded bore **A4**. The spreadable element **116** and the interior element **117** cooperate and form a spreading device axially supported at the end of the inner tube **11**. The spreading element **116** has axial slots (see Figure 6).

However, Lenhart fails to disclose the inner cone **122'** being only one single inner cone of the spreadable element since the spreadable element has two inner cones, and the radially spreadable element being configured as a pot having a base penetrated by a free end area of the adjusting screw, facing away from the inner tube **11**. Further, Lenhart fails to disclose the interior element **117** having protruding fins respectively guided in the axial slots of the spreading element **32**.

Neuheiten teaches, between Figures 5 and 6, that a spreading element can have one inner cone or two inner cones as similarly taught in Lenhart. Neuheiten teaches alternative configurations in order to minimize parts. Therefore, as taught by Neuheiten, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the inner cone **122'** of Lenhart be the only one single inner cone to minimize the number of parts as an alternative configuration.

DSI teaches, in Figure 1, a radially spreadable element **10** configured as a pot having a base penetrated by a free end area of an adjusting screw **5** facing away from the inner tube **3** as an alternative configuration for a radially spreadable element **10** with having only one single inner cone (the conical surface). Therefore, as taught by DSI, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the configuration of the spreadable element **116**, as modified by Neuheiten, with that of DSI to use with the spreading element modified to have only one single inner cone.

Kupski teach, in Figure, 5, an interior element **17** having protruding fins **33** guided in axial slots **30** of a spreading element **16** to prevent the interior element from rotating relative to the spreading element. Therefore, as taught by Kupski, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a fin in the interior element of Lenhart guided in the axial slots of the spreading element of Lenhart to prevent the interior element from rotating relative to the spreading element. Given the modification, the axial slots would have had an axial length larger than an axial length of the fins. Further, the axial slots and the radially protruding fins would have structurally cooperated to permit the interior element to move axially as the adjusting screw is rotated with respect to the interior element without rotation of the radially spreadable element.

Regarding claim 23, given the modification, the axial slots would have extended over most but not all of an entire axial length of the radially spreadable element.

***Allowable Subject Matter***

Claims 11, 24, and 25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

regarding claim 11, the prior art of record does not disclose or suggest an adjustable-length pole comprising a radially spreadable element comprising a cylindrical shoulder having a smaller exterior diameter than a base of the spreadable element and facing an inner tube (lines 1-3) in combination with the spreadable element having a non-threaded bore and only a single inner cone (claim 8, lines 9-10). The closest prior art, Lindemann et al., 6,027,087, teach, in Figure 7, a shoulder 45A having a smaller exterior diameter than the base. However, the shoulder does not face the inner tube but rather the outer tube, or between the base and a top portion of the spreading element; and,

regarding claims 24 and 25, the prior art of record does not disclose or suggest an adjustable-length pole comprising regarding a radially spreadable element

comprising a shoulder having axial slots that extend to but not entirely through the shoulder portion that is proximate to an inner limit stop (lines 1-3) in combination with the spreadable element having a non-threaded bore and only a single inner cone (claims 15 and 16, lines 9-10). The closest prior art would have suggested axial slots that end before the shoulder as taught by Lovrinch et al., 2,955,504, and DSI, DE-8004343.

### ***Response to Arguments***

Applicant's arguments filed May 22, 2009 have been fully considered but they are not persuasive.

Applicant argues that the examiner has not cited prior art to teach the modification of Lenhart to incorporate the limitation that the radially spreadable element is "contactable with each limit stop". First of all, applicant is tackling Lenhart alone when the combined teachings of both Lenhart and Neuheiten would have suggested the claimed invention. With regards to the contact argument, it should be noted that the rejected claims do not indicate that contact be direct as in "directly in contact". Other components can just be in between and thus indirectly in contact with the stop elements. Note that Neuheiten alone, in Figure 6, teaches this contact feature if one were to remove the inner tube 7 from the outer tube 6. In Neuheiten, the spreadable element 18' can simply be slid axially in either direction and contact component 14 and

the edge of the inner tube. There's nothing in Neuheiten that would prevent the spreadable element from contacting while the tubes are separated. Also, note that there is no indication in the claims that the inner tube is actually inserted in the outer tube. Further, it should be noted that patentability is based on the structure and not on the functions of the components. See MPEP 2114.

***Conclusion***

Applicant should also note that Figure 6 in Neuheiten, CH-267177, can be modified alternatively such that the fixed taper 20 is separated and axially threaded into the threaded shank 12, as taught in DSI, or Lenhart, DE-29,706,849.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ernesto Garcia whose telephone number is 571-272-7083. The examiner can normally be reached from 9:30AM-6:00PM. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached at 571-272-7087.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/E. G./

Examiner, Art Unit 3679

September 21, 2009

/Daniel P. Stodola/  
Supervisory Patent Examiner, Art Unit 3679